No. 4

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Brief of Solicitor for Appellee.

UNITED STATES OF AMERICA.

Filed April 30, 1902.

Supreme Court of the United States

STEPHEN BALDWIN,
Complainant and Appellee,
vs.
FRED A. BAKER,
Defendant and Appellant.

No. 4

BRIEF FOR APPELLEE.

THEODORE H. TARRANT,
Solicitor for Appellee.

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[illegible]

UNITED STATES OF AMERICA.

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STEPHEN BALDWIN,
Complainant and Appellee.
vs.
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BRIEF FOR APPELLEE.

The question involved has, I believe, already been settled, not only by the Supreme Court of the United States in the Legal Tender Cases, 12 Wallace, 457, and Juillard vs. Greenman, 110 United States, 444, but by the Supreme Court of Michigan in Van Husan vs. Kanouse, 13 Mich., 303, as well as by the Supreme Courts of several other States, as in

New Hampshire, George vs. Concord, 45 N. H., 434.
Vermont, Carpenter vs. Bank, 39 Vt., 46.
New York, Hagan vs. Powers, 39 Barb., 427; Metropolitan Bank vs. Van Dyke, 27 N. Y., 400.
Pennsylvania, Shellenberger vs. Breton, 52 Pa. St., 9.
Indiana, Thayer vs. Hedges, 23 Ind., 141; Brown vs. Walsh, 26 Ind., 116.
Iowa, Hintrager vs. Bates, 18 Iowa, 174.

Missouri, Virgines vs. Gibbony, 38 Mo., 458.
Wisconsin, Britenbergan vs. Turner, 18 Wis., 140.
Nevada, Maynard vs. Newman, 1 Nev., 271.

All of the above cases holding that it is within the constitutional power of Congress to make treasury notes of the United States a legal tender in payment of debts. Surely, if Congress possesses the power to make a treasury note a legal tender for the payment of debts, it has the power to make silver or any other commodity a like legal tender.

It will be noted that by Act of April 2, 1792, cited in appellant's brief, that by section 16 "all the gold and silver coins which shall have been struck at and issued from the said mint, shall be a lawful tender in all payments whatsoever, those of full weight according to the respective values hereinbefore declared, and those of less than full weight at values proportional to their respective weights."

By section 9 of said act it was provided that, "dollars or units—each to be of the value of a Spanish mill dollar as the same is now current, and to contain three hundred and seventy-one grains and four-sixteenths part of a grain of pure, or four hundred and sixteen grains of standard silver."

Among the gold coins provided for therein were eagles, each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four-eighths of a grain of pure, or two hundred and seventy grains of standard gold. No change whatever has been made by any subsequent act of Congress in the number of grains of pure silver contained in the silver dollar. The only change made therein was made in changing the quantity of alloy so that the standard silver dollar now contains 412½ instead of 416 grains, as provided in the act of 1792. This change was made in section 8 of Act January 18, 1837, making the coins thereafter 9-10 instead of 11-12 fine, as formerly.

The Act of February 12, 1873, section 14, changed the unit of value from the silver dollar to a gold dollar piece at a standard weight and fineness of 25.8 grains. The further coinage of the standard silver dollar provided for by Act of 1792 was discontinued by section 15 of the Act of 1873, and a trade dollar was substituted in its stead, and the silver coins provided for therein were declared to be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment.

By joint resolution July 22nd, 1876, Vol. 19, United States Statutes at Large, 215, it was declared that the trade dollar should not hereafter be a legal tender. Such continued to be the statuts respecting coins until the Act of February 28, 1878, the constitutionality of wnich is assailed by the learned appellant, which act provided: "That there shall be coined at the several mints of the United States, silver dollars of the weight of 412½ grains, troy, of standard silver, as provided in the Act of January 18th, 1837, * * * which coins, together with all silver dollars heretofore coined by the United States, of like weight and fineness, shall be a legal tender at their nominal value, for all debts and dues, public and private, except where otherwise expressly stipulated in the contract."

Under the power conferred upon Congress in section 8, article 1, United States Constitution, "To coin money, regulate the value thereof and of foreign coin, and to fix the standard of weights and measures," Congress at a very early period attached the legal tender quality to coins other than those coined at the mints of the United States.

FOREIGN COINS MADE LEGAL TENDER.

By Act of February 9th, 1793, Congress declared, "That from and after the first day of July next, foreign gold and silver coins shall pass current as money within the United States, and be legal tender for the payment of all debts and demands at the several and respective rates following, and not otherwise. The gold coins of Great Britain and Portugal * * * the gold coins of France, Spain and the dominions of Spain * * * Spanish mill dollar * * * crowns of France," at the respective values therein provided. This last act was suspended by Act of February 1, 1798, for and during the space of three years from and after the first day of January, 1798, and until the end of the next session of Congress thereafter, during which time the said gold and silver coin shall be a legal tender, as is provided in and by the first section of the act aforesaid, and that the same coins shall thereafter cease to be such tender.

By Act approved April 10, 1806, "Foreign gold and silver coins shall pass current as money within the United States and be a legal tender for the payment of all debts and demands at the several and respective rates following:"

The gold coins of Great Britain, Portugal, France, Spain and the dominions of Spain, Spanish mill dollar and the crowns of France. These same foreign coins were regulated again by Act of April 29th, 1816, March 3rd, 1819.

By Act of June 25th, 1834, it was provided: "That from and after the passage of this act, the following silver coins shall be of the legal value, and shall pass current as money within the United States, by tale, for the payment of all debts and demands, at the rate of one hundred cents on the dollar, that is to say, the dollars of Mexico, Peru, Chili and Central America, Brazil and the five-franc piece of France. The coins of Colombia were afterwards added by Act of June 28, 1834, and Peru and Bolivia by Act of March 3rd, 1843. Foreign coins continued to be legal tender for the payment of debts until February 21st, 1857, at which time all former acts authorizing the currency of foreign coins, declaring the same as legal tender for debts, were repealed.

Paper was made lawful money and a legal tender. It was declared by Act of February 25th, 1862, that the treasury notes issued thereunder should be receivable for the payment of taxes, internal duties, excises, debts and demands of every kind due to the United States, except duties on imports, * * * and also shall be *lawful money*, and a *legal tender* in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid.

By Act March 17, 1862, the demand notes authorized by the Act of July 17, 1861, and February 12, 1862, shall, in addition to being receivable on duties and imports, be receivable and shall be *lawful money* and a *legal tender* in like manner and for like purposes and to the same extent as the notes authorized by act approved February 25th, 1862.

In the Act of July 11th, 1862, to authorize an additional issue of United States notes and for other purposes, such notes were again declared to be lawful money and a legal tender in payment of all debts, public and private, except duties on imports and interest on the public debt. Like provisions were made in relation to the $200,000,000 of United States notes authorized by joint resolution January 17th, 1863, and Act of March 3, 1863.

COPPER.

By the act establishing a mint approved April 2, 1792, cents—each to be of the value of one-hundredth part of a dollar, and to contain eleven pennyweights of copper, were also provided for.

January 14th, 1793, Congress enacted "That every cent shall contain 208 grains of copper."

January 18, 1837, it was enacted, "That of the copper coins the weight of the cent shall be 168 grains and the weight of the half cent 84 grains, and the cent shall be considered of the value of 1-100 part of a dollar, and the half cent of the value of 1-200 part of a dollar."

By Act February 21, 1857, it was enacted, "That from and after the passage of this act the standard weight of the cent coined at the mint shall be 72 grains, or 3-20 of one ounce troy, and said cent shall be composed of 88 per cent copper and 12 per cent nickel."

By Act February 12, 1873, the minor coins shall be a five-cent piece, the three-cent piece and a one-cent piece, "the weight of the one-cent piece to be 48 grains, which coin shall be a legal tender at their nominal value, for any amount not exceeding twenty-five cents in any one payment."

So it will be seen that Congress from the beginning has not only declared the coins minted at the government mint to be lawful money and a legal tender, but has also breathed into foreign coin, copper and paper, a monetary spirit and made them all lawful money and a legal tender for the payment of debts. No "money" has ever been created in this or any other country except by the power of law. It is the law which invests the material out of which the money is composed with a monetary character, without which the substance of which the money is composed would be a mere commodity, exchangeable for what it would with other commodities. We must keep in mind the distinction between money as the creature of law and the material which the law uses for the purpose of creating money. It has been often said that the law cannot create values. That is true, but the law may create conditions which will give to a particular thing an exchangeable value which it otherwise would not possess. No doubt, much of the exchangeable value that is now in gold would disappear if all the nations of the earth were to take away from gold its monetary character. No doubt, the great disparity which now exists between silver and gold would

be very much removed, if not entirely obliterated, were silver to be placed upon an equal footing with gold and give it an equal utilization. Silver is now measured in gold values, but if it could be utilized to the same extent and for all the purposes for which gold is, the increased utilization would at once increase its relative value, both as to gold and all other commodities, and this greater utilization of silver would relieve gold from the great strain of commerce that it now bears, tend to lessen the demand and utilization of it and thus equalize the values of the two metals at whatever ratio Congress saw fit to determine upon.

The question involved in this controversy is not one of power, but one of expediency—a question with which this court has no concern.

Long before the Legal Tender Cases, Juillard vs. Greenman, supra, were decided, the constitutionality of the legal tender act came before the Supreme Court of Michigan in Van Husan vs. Kanouse, supra, and was very elaborately discussed and the constitutionality thereof sustained in an opinion delivered by Mr. Justice Campbell, to which I respectfully refer your honors.

The decree of the State court below should be affirmed.

TIMOTHY E. TARSNEY,
Solicitor for Appellee.